



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/970,614	10/04/2001	Elliott H. Drucker	64915/NHZ/PCF	2712

7590 04/19/2004

Norman H. Zivin
Cooper & Dunham LLP
1185 Avenue of the Americas
New York, NY 10036

EXAMINER

PEREZ, JULIO R

ART UNIT	PAPER NUMBER
----------	--------------

2681

DATE MAILED: 04/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/970,614

Applicant(s)

DRUCKER ET AL.

Examiner

Julio R Perez

Art Unit

2681

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 October 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) The invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-32 are rejected under 35 U.S.C. 102(e) as being anticipated by Lumelsky (6246672).

Regarding Claims 1, 9, 17, 25, Lumelsky discloses a method and a system for performing a wireless interactive transaction using a wireless telephone handset comprising the steps of: forming a digitally coded query signal (col. 10, lines 21-33, it is inherent as evidenced by the fact that one of ordinary skill in the art would have recognized that the voice, which is introduced as electrical variations into the microphone, is sampled, and each sample is then converted into a digitally code); converting said digitally coded query signal into an audio-band modulated query signal (col. 10, lines 8-12; col. 10, lines 25-53; col. 14, lines 2-10, the system is able to

reproduce the coded query into an audio signal); transmitting said audio-band modulated query signal (col. 11, lines 60-65, the PRSS, which forms part of the interactive radio system, sends appropriate information to users); receiving said audio-band modulated query signal (col. 12, lines 17-25, the user terminal receives files via antenna (311)); conveying said audio-band modulated query signal to said wireless telephone handset (col. 11, lines 60-65, the PRSS transmits the informational signal to the user's terminal); processing said audio-band modulated query signal to decode instructions coded when forming said digitally coded query signal (col. 12, lines 21-25, Fig. 4, refs, 317, 312, the system comprises the capability to receive encoded signals and to be able to decode information; the system indeed possesses a receiver for receiving audio signals as well as a transmitter for transmitting audio signal information); and controlling said wireless telephone handset to respond to said decoded instructions (col. 11, lines 48-65, the terminal provides means for inputting commands through pressing appropriate control keys on the user terminal).

Regarding claims 2, 10, 18, 26, Lumelsky discloses the method and a system for performing a wireless interactive transaction, wherein said decoded instructions include a response telephone number and said step of controlling controls said wireless telephone handset to initiate a telephone call to said response telephone number (col. 5, lines 51-56; col. 6, lines 32-56; col. 11, lines 50-60, it is inherent as evidenced by the fact that one of ordinary skill in the art would have recognized that the user terminal is provided with means to call back or communicate with content providers).

Regarding claims 3, 11, 19, 27 Lumelsky discloses the method and system for performing a wireless interactive transaction according to claim 1, wherein said step of controlling controls said wireless telephone handset to respond to said decoded instructions after a predetermined action by a user (col. 11, lines 48-60, the user commands may be either by voice or by the use of command keys situated on the terminal, which, in turn, effects the processor of the user terminal to log on a request).

Regarding claims 4, 12, 20, 28 Lumelsky discloses the method and system for performing a wireless interactive transaction, wherein said decoded instructions include user instructions, and said step of controlling controls said wireless telephone handset to display said user instructions and to respond to said decoded instructions when said user responds to said displayed user instructions (col. 11, lines 11-37, the user has the option of browsing during information reception, which, indeed, would provide authority to act on his or her response).

Regarding claims 5, 13, 21, 29 Lumelsky discloses the method and system for performing a wireless interactive transaction, wherein an alerting signal is produced when said audio-band modulated query signal is conveyed to said wireless telephone handset (col. 11, lines 38-47, it is inherent as evidenced by the fact that one of ordinary skill in the art would have recognized that the user terminal may be equipped with notifying means).

Regarding claims 6, 14, 22, 30 Lumelsky discloses the method and system for performing a wireless interactive transaction, wherein said decoded instructions include instructions to send a pre-determined digital message to a particular destination and

Art Unit: 2681

said step of controlling controls said wireless telephone handset to send said digital message (col. 6, lines 1-4; col. 9, lines 6-13; col. 11, lines 25-30; col. 21, lines 38-46, the user has the means to send written messages or request information through text).

Regarding claims 7, 15, 23, 31 Lumelsky discloses the method and system for performing a wireless interactive transaction, wherein said conveying of said audio-band modulated query signal to said wireless telephone handset is comprised of the steps of: producing an acoustic query signal from said received audio-band modulated query signal; and detecting and converting to an audio-band signal said acoustic query signal by said wireless telephone handset (col.12, lines 10-45; Fig. 4, refs, 317, 327, 328, 329, the handset provides means to convert analog signals onto digital signals).

Regarding claims 8, 16, 24, 32 Lumelsky discloses the method and system for performing a wireless interactive transaction, wherein said conveying of said audio-band modulated query signal to said wireless telephone handset is by an electronic connection (col. 6, lines 32-66, it is inherent as evidenced by the fact that one of ordinary skill in the art would have recognized that the modulated signal may be transported to the user terminal through electronic means; informational requests may be delivered via a wireless communications network).

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following patents are cited to further show the art with respect to interactive radio systems and operation of automatic configuration of equipment.

US Pat. No. 6704864 to Philyaw	Automatically configuring software
US Pat No. 5303393 to Noreen et al.	Features of nationwide broadcast of FM
US Pat. No. 5585858 to Harper et al.	Simulcast interactive signals


4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julio R Perez whose telephone number is (703) 305-8637. The examiner can normally be reached on Monday - Friday, 7:30AM-4:00PM.

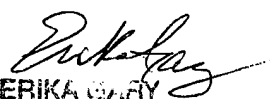
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Erika Gary can be reached on (703) 308-0123. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Application/Control Number: 09/970,614
Art Unit: 2681

Page 7


JP
4/12/04


ERIKA GARY
PATENT EXAMINER